

# **AGREEMENT BETWEEN THE REPUBLIC OF MOLDOVA AND THE UNITED ARAB EMIRATES FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the Republic of Moldova and the Government of the United Arab Emirates (hereinafter referred to as the "Contracting Parties");

Desiring to promote greater economic co-operation between them with respect to investments made by investors of one Contracting Party in the territory of the state of the other Contracting Party;

Recognizing that the promotion and reciprocal protection of such investments will be conducive to the stimulation of business initiatives and to the increase of prosperity in both Contracting Parties;

Agreeing that a stable framework for investment will maximize effective utilization of economic resources and improving living standards in both Contracting Parties;

Recognizing that these objectives can be achieved without compromising health and safety standards and applied environmental measures;

It is agreed that this Agreement shall not apply to pre-establishment of investments.

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement unless the context otherwise requires the following words shall have the meaning assigned for each:

1. The term "investment" means every kind of asset owned and controlled directly or indirectly which is connected with business activities, acquired for the purpose of establishing lasting economic relations in the territory of a Contracting Party in conformity with its laws and regulations, and that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, the assumption of risk, or a certain duration, and shall include in particular, but not exclusively:

a. movable and immovable property as well as any other rights, such as mortgages, pledges, usufructs and similar rights;

b. a company, shares, stocks, debentures and other forms of participation in a company;

c. debentures, bonds, loans and other forms of debt;

d. claims to money or any other assets or performance having an economic value ;

e. intellectual and industrial property rights, such as copyrights, trademarks, patents, technical processes, know-how and goodwill, which are related to the investment, and

f. rights conferred by law or contract such as concessions, licenses, authorization or permits. Natural resources shall not be covered by this Agreement in the case of the United Arab Emirates.

Claims to money involving the kind of interest set out in (a) to (f) above shall not include:

i. commercial contracts for the sale of goods or services by a national or a company of a Contracting Party to a national or a company in the territory of the other Contracting Party; or

ii. the extension of credit in connection with commercial transaction such as trade financing.

In order to qualify as an investment for the purposes of this Agreement, an asset must have the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectations of gain or profit, and the assumption of risk.

The arbitration award or any order or judgment rendered with regard to the investment shall not be considered as investment for the purposes of this Agreement.

2. The term "investor" of a Contracting Party shall mean:

a) Any natural person who is a national of that Contracting party in accordance with its legislation;

b) Any legal person established in the territory of the Contracting Party in accordance with its legislation and has a head office in its territory whether privately or governmentally owned.

3. For the purposes of this Article the term "legal person" shall mean: owned by an investor if more than 50% of the equity interest in it is owned by that legal person.

4. The term "controlled" shall mean: if the investor has the power to name the majority of its board members.

5. The term "investment activities" shall mean: operation, management, maintenance, use, enjoyment, sale or any other disposal of investment.

6. The term "returns" shall mean: all amounts yielded by an investment or reinvestment includes in particular though not exclusively; profits, interest, dividends, royalties, capital gains and fees.

7. The term "without delay" shall mean: the period necessary to complete the legal formalities for transfer of funds.

8. The term "territory" shall mean:

a. The term "Republic of Moldova" means its territory within its borders, consisting of soil, subsoil, waters and aerial space above soil and waters, over which the Republic of Moldova exercises its absolute and exclusive sovereignty and jurisdiction, in accordance with its internal legislation and international law;

b. In respect of the United Arab Emirates: the territory of the United Arab Emirates, its territorial sea, airspace and submarine areas over which the United Arab Emirates exercises in accordance with international law and the law of United Arab Emirates sovereign rights; including the Exclusive Economic Zone and the mainland and islands under its jurisdiction in respect of any activity carried on in its water, seabed and subsoil in connection with the exploration for or the exploitation of the natural resources by virtue of its law and international law.

9. the term "free usable currency" means free usable currency as defined by the IMF articles of agreement or any international currency that is widely used to make payments in international transactions.

## **Article 2. Promotion of Investments**

Each Contracting Party shall, subject to its general policy in the field of foreign investment, promote in its state territory investments by investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations.

## **Article 3. Protection and Treatment of Investments**

1. Each Contracting Party shall accord to the investments made by investors of the other Contracting Party in the territory of the state of the former fair and equitable treatment and full protection and security in accordance with customary international law.

2. For greater certainty a Contracting Party breaches the obligation to provide fair and equitable treatment set out in paragraph (1), only if it adopts measures or series of measures that constitute:

- denial of justice, including a fundamental breach of due process, in criminal, civil or administrative proceedings;
- manifestly arbitrary conduct;
- targeted discrimination on the basis of nationality, gender, race or religious beliefs.

3. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments made by investors of the other Contracting Party.

4. Each Contracting party shall observe any obligation which it has assumed with respect to the investment of the investor of a Contracting Party.
5. In accordance with its laws and regulations, each Contracting Party shall as far as possible make publicly available, its laws, regulations that pertain to investments.
6. In case of liquidation of an investment, the proceeds from liquidation shall be accorded the same protection and treatment.
7. A determination that there has been a breach of another provision of this Agreement or of a separate international agreement does not establish that there has been a breach of this Article.

#### **Article 4. Most Favored Nation Treatment**

1. Each Contracting Party shall accord to investors of the other Contracting Party and to their investments and returns treatment no less favorable than that it accords, in like circumstances to investors of any third state and their investments, in relation to the management, conduct, operation, disposal, enjoyment and use of investments.
2. For greater certainty, treatment referred to in paragraph 1 shall not encompass the dispute resolution mechanisms, or any procedural or judicial matters, as well as any undertakings concerning the contractual obligations of the host state as provided in this or other international agreements.
3. The provisions of this Agreement shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:
  - a) Membership of any existing or future regional economic integration agreement or organization or customs union of which one of the Contracting parties is or may become a Party; or
  - b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.
4. Provisions of this Article shall not apply to government procurement, subsidies, and loans, guarantees, insurance accorded to domestic companies.

#### **Article 5. National Treatment**

1. Subject to its laws and regulations each Contracting Party shall accord to investors of the other Contracting party and to their investments and returns treatment no less favourable than the treatment it accords in like circumstances to its own investors and their investments, only in relation to the management, conduct, operation and disposal of investments.
2. Provisions of this Article shall not apply to government procurement.

#### **Article 6. Expropriation**

1. Neither Contracting Party shall expropriate, nationalize or take measures having equivalent effect (hereinafter referred to as "expropriation") against investments of investors of the other Contracting party, except where such expropriation is carried out:
  - a) for public purposes;
  - b) on a non-discriminatory basis;
  - c) with the payment of prompt, adequate and effective compensation; and
  - d) In accordance with due process of law.
2. Where the fair market value cannot be ascertained, the compensation shall be determined in equitable manner taking into account all relevant factors and circumstances, such as the capital invested, the nature and duration of the investment, replacement, book value and goodwill.
3. The paragraphs 1 and 2 of this Article shall not, however, impair in any way the right of a Contracting Party to enforce such laws or take measures or regulatory actions as it deems necessary to protect legitimate public welfare objectives, such as public health, safety, and the environment, control the use of property in accordance with the general interest or to secure the payment of taxes or other contribution of penalties.

4. Notwithstanding the provisions of this Article, sovereign assets and sovereign wealth funds shall not be subject to nationalization, exploration, sequestration, blocking or freezing by a Contracting Party nor shall be subject to any of these measures directly or indirectly by a request of a third party.

## **Article 7. Compensation for Losses**

1. Investors of either Contracting party who suffers losses of their investments in the territory of the state of the other Contracting Party due to war or other armed conflict, civil disturbances, a state of national emergency, revolt, insurrection or riot shall be accorded with respect to restitution, indemnification, compensation or other settlement, treatment no less favorable than that accorded to its own investors or to investors of any third state, whichever is more favorable.

2. Without prejudice to paragraph 1 of this Article, investors of a Contracting Party who in any of the events referred to in that paragraph suffer a loss in the territory of the state of the other Contracting Party resulting from:

a) requisitioning of its investment or part thereof by the latter's force's or authorities, or

b) destruction of its investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

shall be accorded prompt, adequate and effective restitution or compensation.

## **Article 8. Transfers**

1. Each Contracting Party shall guarantee in good faith all transfers related to an investment to be made freely and without undue delay into and out of its territory. Such transfers include:

a. initial capital and additional amounts for the maintenance or increase of an investment;

b. returns;

c. proceeds from the sale of all or any part of the investment or from partial or complete liquidation of the investment;

d. payments made under a contract, including a loan agreement;

e. earnings of personnel engaged from abroad in connection to an investment in its territory; and

f. payments made pursuant to Articles 6 and 7 of this Agreement.

2. Each Contracting Party shall permit transfers relating to an investment to be made in a freely convertible currency at the market rate of exchange prevailing on the date of transfer.

3. Notwithstanding paragraphs 1 and 2 of this Article, a Contracting Party may delay and /or prevent a transfer through the equitable, non-discriminatory, and good faith measures relating to taxation, protection of rights of creditors, ensuring compliance with judicial or administrative judgments or decisions.

## **Article 9. Denial of Benefits**

1. A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is a legal person of such other Contracting Party and to investments of that investor if persons of a non-Contracting Party own or control the legal person and the denying Contracting party does not maintain diplomatic relations with the non-Contracting Party.

2. A Contracting Party may deny the benefits of this Agreement to an investor which is a legal person of the other Contracting Party and to investments of that investor if that legal person has no substantial business activities in the territory of the State of the other Contracting Party and persons of a non-Contracting Party, or of the denying Contracting Party, own or control the legal person.

## **Article 10. Employment of Managerial Staff**

The Investor of Either Contracting party may employ high level managerial staff regardless of their nationality provided that the state of such managerial staff should have diplomatic relations with the country on whose territory the investment is made.

## **Article 11. Prohibition of Performance Requirements**

1. A Contracting Party may not impose or enforce on Investors of the other Contracting Party any performance requirement in connection with the management, conduct or operation of their Investments in the Territory of that Contracting Party.

2. A Party may not impose or enforce the following requirements, or enforce a commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of a covered investment or any other investment in its territory:

- a) to export a given level or percentage of a good or service;
- b) to achieve a given level or percentage of domestic content;
- c) to purchase, use or accord a preference to a good produced or service provided in its territory, or to purchase a good or service from a person in its territory;
- d) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with that investment;

## **Article 12. General Exceptions**

1. Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting, maintaining, or enforcing any non-discriminatory legal measures:

- (a) designed and applied for the protection of human, animal or plant life or health, or the environment;
- (b) related to the conservation of living or non-living exhaustible natural resources.

2. Nothing in this Agreement shall be construed:

(a) to require any Contracting Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;

(b) to prevent any Contracting Party from taking any actions that it considers necessary for the protection of its essential security interests,

(i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment,

(ii) taken in time of war or other emergency in international relations, or

(iii) relating to the implementation of national policies or international agreements respecting the non- proliferation of nuclear weapons or other nuclear explosive devices; or

(c) to prevent any Contracting Party from taking action in pursuance of its obligations, under the United Nations Charter for the maintenance of international peace and security.

3. The adoption, maintenance or enforcement of such measures is subject to the requirement that they are not applied in an arbitrary or unjustifiable manner or do not constitute a disguised restriction on investments of investors of the other Contracting Party.

## **Article 13. Subrogation**

1. If one Contracting Party or its designated agency (for the purpose of this Article: the "guarantor") makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize: a) the assignment to the guarantor by law or by legal transaction of all the rights and claims of the party indemnified; and b) that the guarantor is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified, and shall assume the obligations related to the investment.

2. The guarantor shall be entitled in all circumstances to:

- a) the same treatment in respect of the rights, claims and obligations acquired by it, by virtue of the assignment; and

b) any payments received in pursuance of those rights and claims as the party indemnified was entitled to receive it by virtue of this Agreement, in respect of the investment concerned and its related returns.

3. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

4. Notwithstanding paragraph 1 of this Article, subrogation shall take place in the Contracting Party only after the approval of the competent authority of that Contracting Party.

## **Article 14. Settlements of Investment Disputes between the Investor and the other Contracting Party**

1. This Article applies to legal disputes between an investor of one Contracting Party and the other Contracting Party arising out of the investment of the former in the territory of the state of the latter Contracting Party. Such dispute shall concern an alleged breach of an obligation of the Contracting Party under this Agreement which caused loss or damages to the investor of the other Contracting Party.

2. To start consultations, the investor shall deliver to the Contracting Party a written notice. The notice shall specify details of the dispute such as:

- a. the name and address of the disputing investor;
- b. the provisions of this Agreement alleged to have been breached; and
- c. the factual and legal basis for the claim.

3. If the dispute cannot be settled amicably within six months from the date of receipt of the written notice, the dispute shall upon the request of the investor be settled as follows:

- a. by a competent arbitration court of the Contracting Party in whose territory the investment is made; or
- b. by arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18" March 1965 provided both Contracting Parties are party to the said Convention; or
- c. by the Additional Facility of ICSID, if only one of the Contracting Parties is a signatory to the Washington Convention; or
- d. by arbitration before the tribunal of three arbitrators in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), as amended in 2010. In case of arbitration, each Contracting Party, by this Agreement irrevocably consents in advance to submit any such dispute to the tribunal constituted in accordance with the said rules;

4. The award shall be final and binding. Each Contracting Party shall ensure the recognition and enforcement of the arbitral award in accordance with its laws and regulations and norms and principles of international law.

5. Disputes arising out of any other agreement concluded between the investor and any designated entity of a Contracting Party or its local government concerning the investment of those investors shall be settled according to the dispute settlement procedure stipulated therein.

6. In case of initiation of dispute settlement proceedings under any of the forums provided for in paragraph 3 of this Article, the selected forum shall be used by the parties to the dispute to the exclusion of the other two forums as regards the disputes with the same or identical subject matter.

7. No investment dispute may be submitted for resolution by arbitration under paragraph 3 of this Article if more than five years have elapsed from the date on which the investor first acquired or should have acquired knowledge of the alleged breach and loss or damage that the latter has allegedly incurred.

## **Article 15. Settlement of Disputes between the Contracting Parties**

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled amicably through consultations and/or other diplomatic channels.

2. If the Contracting Parties cannot reach an agreement within six (6) months following the date on which the consultations were requested and/or other diplomatic channels were initiated by either Contracting Party, the dispute shall, upon the request of the Contracting Party, be submitted to an arbitral tribunal. In the absence of an agreement by the Contracting

Parties to the contrary, arbitration proceedings shall be conducted in accordance with the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two States, except as modified by the Contracting Parties or this Agreement.

3. Unless the Parties otherwise agree, the dispute shall be resolved by three member arbitration tribunal. Each Contracting Party shall appoint one arbitrator within two months from the date on which either Contracting Party receives from the other Contracting Party a request for arbitration. The two arbitrators thus selected shall together within a further two months period, select a third arbitrator who is a national of a third State. The third arbitrator once approved by the two Contracting Parties, shall act as Chairman of the arbitral tribunal.

4. If any member of the arbitral tribunal is not selected within the time frames defined in paragraph 3 of this Article, Secretary-General of the Permanent Court of Arbitration, upon the request of either Contracting Party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.

5. The place of the arbitration proceedings shall be The Hague, the Netherlands.

6. The arbitral tribunal shall reach its decisions by a majority of votes. The decisions shall be final and binding upon each Contracting Party.

7. Expenses incurred by the arbitrators, and other costs of the proceedings, shall be borne equally by the Parties. The arbitral tribunal may, however, in its discretion, decide that a higher proportion of costs shall be paid by one of the two Contracting Parties.

8. The language to be used in the arbitral proceedings shall be English.

## **Article 16. Application of the Agreement**

This Agreement shall apply to investments made in the territory of the state of one Contracting Party in accordance with its laws and regulations by investors of the other Contracting Party before or after the entry into force of the Agreement, but shall not apply to any dispute that has been settled before its entry into force.

## **Article 17. Amendments**

As agreed between the Contracting Parties the amendments and additions may be made to this Agreement, which shall be concluded in the form of a separate document and shall enter into force according to the paragraph 1 of Article 16 of this Agreement. This separate document shall constitute an integral part of this Agreement.

## **Article 18. Application of other Rules**

Without prejudice to Article 4, if the legislation of either Contracting Party or obligations between the Contracting Parties under international law existing at present or established hereafter between the Contracting Parties, in addition to this Agreement, contain rules whether general or specific, entitling investments made by investors of the other Contracting Party to a treatment more favorable than is provided for by this Agreement, such rules shall to the extent that they are more favorable to the investor, prevail over this Agreement.

## **Article 19. Consultations**

The Contracting Parties shall, on the request of either, hold consultations on any matter relating to the implementation or application of this Agreement. These consultations shall be held upon the request of either Contracting Party at a place and a time to be agreed upon through diplomatic channels.

## **Article 20. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force on the thirtieth day following the date of receipt of the last written notification, through diplomatic channels, on the completion of all internal legal procedures necessary for the entry into force of this Agreement for the Contracting Parties.

2. This Agreement shall remain in force for a period of ten (10) years and shall continue to be in force thereafter unless terminated in accordance with paragraph 3 of this Article.

3. Either Contracting Party may terminate this Agreement at the end of the initial ten-year period or at any time thereafter

by sending to the other Contracting Party 1 year prior written notice through the diplomatic channels.

4. With respect to investments made prior to date of termination of this Agreement, the provisions of Article 1 through 14 shall remain in force for a further period of ten (10) years following such date.

IN WITNESS WHEREOF, the undersigned, duly authorized to that effect, have signed this Agreement.

DONE at Chisinau, as of 10 July 2017 in duplicate each in the Romanian, Arabic, and English languages. All texts are equally authentic. In case of divergence in interpretations of provisions of this Agreement by the Contracting Parties, the English text shall prevail.

**FOR THE REPUBLIC OF MOLDOVA**

**Andrei Galbur**

**Deputy Prime-minister, Minister of Foreign Affairs and European Integration**

**FOR THE UNITED ARAB EMIRATES**

**Abdullah Bin Zayed Al Nahyan**

**Minister of Foreign Affairs and International Cooperation**